

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BERNARD ALLEN,

Plaintiff,

v.

DETROIT POLICE DEPARTMENT,
et al.

Defendants.

Case No. 24-11524

Honorable Robert J. White

ORDER VACATING ORDER TO SHOW CAUSE

On October 29, 2024, the Court ordered Plaintiff to show cause why this case should not be dismissed for failure to prosecute as to Defendant “Officer Lupin,” ECF No. 1, PageID.2, who has yet to be served in this case. On November 12, 2024, Plaintiff responded to the Court’s order, which the Court reproduces here in its entirety:

This is a police brutality case. To the best of Plaintiff’s knowledge, the two officers involved are the ones listed in the complaint. Plaintiff has successfully completed service on the other defendants. When Plaintiff’s process servers, however, attempted service on Officer Lupin, they were told that the surname was incorrect and service would not be accepted for her. Officer Lupin’s real name is Officer Luna. Accordingly, Plaintiff respectfully requests this Court allow him to amend his complaint, correctly naming Officer Luna, and issue a new summons for Officer Luna.

ECF No. 9, PageID.53.

Plaintiff has provided good cause to vacate the show cause order. But to the extent Plaintiff seeks to amend his complaint, his filing falls short. Under Federal Rule of Civil Procedure 15(a)(2), “a party may amend its pleading” beyond “21 days after service of a responsive pleading” “only with the opposing party’s written consent or the court’s leave.” If the former is given, Plaintiff can submit a proposed stipulated order to that effect; if it isn’t, Plaintiff can move for leave to amend. *See, e.g., Toyee v. Sterling Heights Police Dept.*, No. 20-10542, 2020 WL 7056041, at *1 (E.D. Mich. Dec. 1, 2020) (addressing a motion for leave to amend the complaint “to correct the name of two of the defendant officers”). Accordingly,

IT IS ORDERED that the Court’s order to show cause (ECF No. 8) is VACATED.

IT IS FURTHER ORDERED that with **14 days** of this Order, Plaintiff shall either (1) submit via CM/ECF Utilities a proposed stipulated order to amend the complaint, or (2) file on the docket a motion for leave to amend the complaint.

Dated: November 19, 2024

s/Robert J. White

Robert J. White

United States District Judge